

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

BRUCE KRIEGMAN, solely in his
capacity as court appointed Chapter 11
trustee for LLS America, LLC.,

Plaintiff,

v.

RONALD PONTON, JR. and TOMIKA
PONTON,

Defendants.

Case No.C22-307RSM

SUPPLEMENTAL DECLARATION
OF BRUCE P. KRIEGMAN IN
SUPPORT OF MOTION TO
DISMISS

NOTE ON MOTION CALENDAR:
Friday, November 18, 2022

Bruce P. Kriegman declares and states:

1. I am the court-appointed Chapter 11 Trustee for LLS America, LLC and am Trustee of the LLS America, LLC Liquidating Trust (the "Trust"). I make this declaration on personal knowledge and on my review of my files and records in this proceeding.

2. I have read the Defendants' Response in Opposition to Motion to Dismiss Garnishment Proceeding, Vacate Order Freezing Accounts, Withdraw Certification to

SUPPLEMENTAL DECLARATION OF BRUCE F
KRIEGMAN IN SUPPORT OF MOTION TO
DISMISS - 1
(Case No.C22-307RSM)
{19581/001/03020362-3}

MONTGOMERY PURDUE PLLC
ATTORNEYS AT LAW
701 FIFTH AVENUE, SUITE 5500
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TEL (206) 682-7090 FAX (206) 625-9534

1 State Supreme Court (the "Opposition Response"). Defendants state, at page 3, lines
 2 19-20 of their Opposition Response, that "unless the Trustee certifies under oath
 3 otherwise, he is forum shopping to avoid an adverse decision in a better forum." I
 4 hereby certify that I am not forum shopping, and I will not apply for another writ of
 5 garnishment against Chase Bank as garnishee defendant either in King County
 6 Superior Court or in the superior court for any other county in the state of Washington.

7 3. At page 4 of the Opposition Response, Defendants state that "it seems, the
 8 Trustee has discharged certain counsel (Green & Norwood)." I have done no such
 9 thing. Green & Norwood remain as counsel of record in this case.

10 4. At pages 5 and 6 of the Opposition Response, Defendants in substance
 11 alleged that I did not wish to mediate, did not cooperate to schedule a mediation, and
 12 "brushed off mediation." Those allegations are false. I will not comment on any
 13 substantive settlement discussions, as doing so is improper under ER 408. However,
 14 as it relates to my willingness to mediate, my counsel and I advocated for mediation,
 15 and we worked with Defendants for an extended period of time to schedule a mediation
 16 even though we were being told by Defendants' counsel that the prospects of
 17 settlement were "bleak," and that it was "unlikely to settle" (see Exhibit A attached
 18 hereto). A copy of the email string showing the involvement and efforts of me and my
 19 attorney, Shelley Ripley, to schedule a mediation, is attached hereto as Exhibit A. We
 20 proposed both a federal magistrate judge (Judge Brian A. Tscuchida) and a federal
 21 bankruptcy judge (Judge Marc Barreca) as mediators, as well as Matt Turetsky (who
 22 the parties selected to mediate the case). While a mediation was scheduled,
 23 Defendants then unilaterally decided to cancel it.

1 I declare under penalty of perjury under the laws of the State of Washington that
2 the foregoing is true and correct.

3 DATED this 18th day of November, 2022, at Seattle, Washington.

4 
5 _____
6 Bruce P. Kriegman
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EXHIBIT A

Mike Gossler

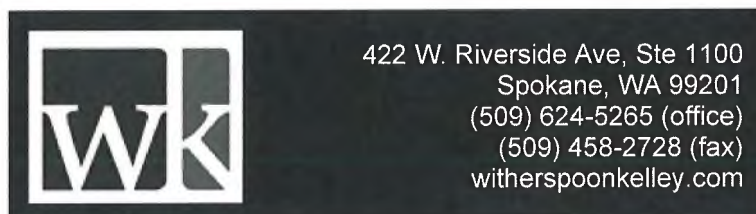
From: Shelley N. Ripley <SNR@witherspoonkelley.com>
Sent: Wednesday, September 21, 2022 12:44 PM
To: vsprings@springslawfirm.com; Matthew W. Daley
Cc: 'Elizabeth Hebener Norwood'; 'Christina Henry'
Subject: RE: Kriegman v Pontons 2:22-cv-307 Confidential Settlement Offer/FRE 408

Venus –

You cannot unilaterally select mediators. We are not agreeable to certain of the mediators you suggested which is why we proposed alternates. I will reach out to Mr. Matthew Turetsky (which I presume you had no objection since no objection was made). Would you like to be on the call to him?

Shelley

Shelley N. Ripley
Principal | Witherspoon • Kelley
SNR@witherspoonkelley.com | [Attorney Profile](#) | [vCard](#)



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From: vsprings@springslawfirm.com <vsprings@springslawfirm.com>
Sent: Wednesday, September 21, 2022 12:29 PM
To: Shelley N. Ripley <SNR@witherspoonkelley.com>; Matthew W. Daley <MWD@witherspoonkelley.com>
Cc: 'Elizabeth Hebener Norwood' <elizabeth@gnlawseattle.com>; 'Christina Henry' <chenry@hdm-legal.com>
Subject: RE: Kriegman v Pontons 2:22-cv-307 Confidential Settlement Offer/FRE 408

I asked you for dates of availability and you still haven't responded with any dates so please respond. Mr. Harris declined to mediate this dispute because as his profile suggested he has no experience in this area. I am going to request dates from the mediators Ms. Henry and I suggested.

From: Shelley N. Ripley <SNR@witherspoonkelley.com>
Sent: Wednesday, September 21, 2022 3:09 PM
To: vsprings@springslawfirm.com; Matthew W. Daley <MWD@witherspoonkelley.com>
Cc: 'Elizabeth Hebener Norwood' <elizabeth@gnlawseattle.com>; 'Christina Henry' <chenry@hdm-legal.com>
Subject: RE: Kriegman v Pontons 2:22-cv-307 Confidential Settlement Offer/FRE 408

Venus –

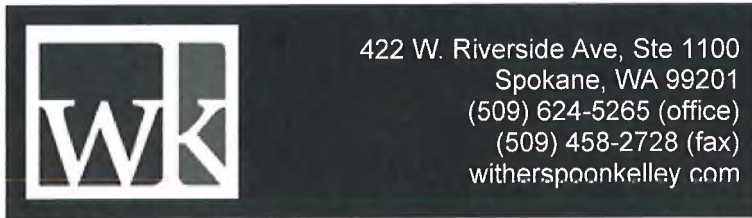
Do you have any update on the below? The trustee and we are fairly available to mediate anytime in the upcoming weeks. It may be helpful for the mediators to provide dates for our review.

Shelley

Shelley N. Ripley

Principal | Witherspoon • Kelley

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From: vsprings@springslawfirm.com <vsprings@springslawfirm.com>

Sent: Wednesday, September 14, 2022 5:24 PM

To: Shelley N. Ripley <SNR@witherspoonkelley.com>; Matthew W. Daley <MWD@witherspoonkelley.com>

Cc: 'Elizabeth Hebener Norwood' <elizabeth@gnlawseattle.com>; 'Christina Henry' <chenry@hdm-legal.com>

Subject: RE: Kriegman v Pontons 2:22-cv-307 Confidential Settlement Offer/FRE 408

Good afternoon, Shelley,

I don't believe face to face communication between sincere parties is ever futile and I never said that an agreement among the parties is bleak. According to the local rules the court can order the parties to file a joint status report and it doesn't have to enter a scheduling order. This makes sense when we informed the court only matters of law were at issue. I don't see what discovery could be possible in a garnishment proceeding and in the discovery plan, apparently, neither could you.

I have contacted both of the mediators for their schedules. Please let me know what dates you and the plaintiff can be available. We won't need more than half a day and likely less. It may be that your client's motion is granted in the interim and then a mediation will not be necessary.

Best regards,
Venus

From: Shelley N. Ripley <SNR@witherspoonkelley.com>

Sent: Tuesday, September 13, 2022 3:27 PM

To: vsprings@springslawfirm.com; Matthew W. Daley <MWD@witherspoonkelley.com>

Cc: 'Elizabeth Hebener Norwood' <elizabeth@gnlawseattle.com>; 'Christina Henry' <chenry@hdm-legal.com>

Subject: RE: Kriegman v Pontons 2:22-cv-307 Confidential Settlement Offer/FRE 408

Venus –

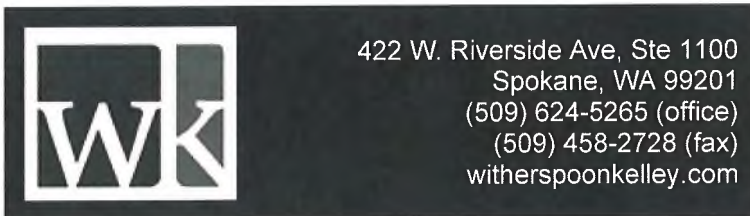
As you are aware, the Court has not yet entered a scheduling order. As such, it is likely we will need to readdress the dates set forth in the Joint Case Status Report. For example, the Court has not ruled on the motion to certify. Discovery may be required depending on the Court's ruling.

Notwithstanding the foregoing, the Trustee reviewed the attorney neutral list. The Trustee would agree to Matthew Turetsky or Jessie L. Harris. Again, the Trustee would like to preserve Trust assets. Given your statement that an agreement among the parties is bleak, mediation appears to be futile. Nevertheless, the Trustee is willing to proceed with mediation but reserves the right to seek court intervention in the event mediation by an attorney neutral will be cost prohibitive. It may be more productive if we schedule mediation following the Court's ruling on the motion to certify.

Please let us know how your clients would like to proceed.

Shelley

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From: Shelley N. Ripley <SNR@witherspoonkelley.com>
Sent: Tuesday, September 13, 2022 2:36 PM
To: vsprings@springslawfirm.com; Matthew W. Daley <MWD@witherspoonkelley.com>
Cc: 'Elizabeth Hebener Norwood' <elizabeth@gnlawseattle.com>; 'Christina Henry' <chenry@hdm-legal.com>
Subject: RE: Kriegman v Pontons 2:22-cv-307 Confidential Settlement Offer/FRE 408

Venus –

I am speaking with the Trustee this afternoon. I will follow up with you later today.

Shelley

Shelley N. Ripley
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From: vsprings@springslawfirm.com <vsprings@springslawfirm.com>
Sent: Friday, September 9, 2022 1:59 PM
To: Shelley N. Ripley <SNR@witherspoonkelley.com>; Matthew W. Daley <MWD@witherspoonkelley.com>
Cc: 'Elizabeth Hebener Norwood' <elizabeth@gnlawseattle.com>; 'Christina Henry' <chenry@hdm-legal.com>
Subject: RE: Kriegman v Pontons 2:22-cv-307 Confidential Settlement Offer/FRE 408

Thank you.

From: Shelley N. Ripley <SNR@witherspoonkelley.com>
Sent: Friday, September 9, 2022 3:45 PM
To: vsprings@springslawfirm.com; Matthew W. Daley <MWD@witherspoonkelley.com>
Cc: 'Elizabeth Hebener Norwood' <elizabeth@gnlawseattle.com>; 'Christina Henry' <chenry@hdm-legal.com>
Subject: RE: Kriegman v Pontons 2:22-cv-307 Confidential Settlement Offer/FRE 408

Venus –

I just returned to the office this week from being out of the country for 14 days. I received your below email and have reached out to the Trustee to discuss mediation. We will get back to you early next week.

Shelley

Shelley N. Ripley
Principal | Witherspoon • Kelley
SNR@witherspoonkelley.com | [Attorney Profile](#) | [vCard](#)



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From: vsprings@springslawfirm.com <vsprings@springslawfirm.com>
Sent: Friday, September 9, 2022 11:37 AM
To: Shelley N. Ripley <SNR@witherspoonkelley.com>; Matthew W. Daley <MWD@witherspoonkelley.com>
Cc: 'Elizabeth Hebener Norwood' <elizabeth@gnlawseattle.com>; 'Christina Henry' <chenry@hdm-legal.com>
Subject: RE: Kriegman v Pontons 2:22-cv-307 Confidential Settlement Offer/FRE 408

Good afternoon Shelley,

I hope all is well. According to the joint status report, we agreed to select a mediator from the list of attorney neutrals and complete mediation by the end of this month. It was agreed to by both sides and filed with the court by your client, the Plaintiff. If you do not plan to/are unable to comply with the Joint Status Report, please let me know and seek some relief from that requirement from the court by COB Monday. I provided two possible cost-free provisions below. My client would still like to have a mediator with someone from the register of attorney neutrals. Although agreement seems pretty bleak, I have seen some good mediators work out deals among worse circumstances. Additionally, it can be brief and both sides can seek hardship accommodation. After Monday, I intend to ask the Court to select the mediator pursuant to the clause (c)(3) that I pasted in the July 27th email (see below) unless the case closes.

Best regards,
Venus

From: vsprings@springslawfirm.com <vsprings@springslawfirm.com>

Sent: Wednesday, July 27, 2022 5:56 PM

To: 'Christina Henry' <chenry@hdm-legal.com>; 'Shelley N. Ripley' <SNR@witherspoonkelley.com>; 'Matthew W. Daley' <MWD@witherspoonkelley.com>

Cc: 'Elizabeth Hebener Norwood' <elizabeth@gnlawseattle.com>

Subject: RE: Kriegman v Pontons 2:22-cv-307 Confidential Settlement Offer/FRE 408

Shelley-

Following up on Christina's response, I reviewed the backgrounds of the two federal judges and I don't see any state law experience. This case involves some important state law issues and it would be best to have someone familiar with both. I see both had private practice experience, one before 2010 and the other before 2008 but there is no detail. We, therefore, do not wish to use either of them as mediators. In the filed Joint Status Report we both agreed to pick from the list of attorney neutrals. I have experienced better settlement results with attorneys than judges. If finances are the issue, please note the hardship accommodations below copied from page 73 of the Western District of Washington local rules. The trustee may apply for free mediation based on financial hardship. This Court would understand how liquidating trusts are funded.

(c)(3) If the parties cannot agree upon the selection of a mediator, either party may apply to the court for the designation of a mediator from the register of attorney neutrals. The court shall thereupon promptly designate a mediator from the register and shall send notice of that designation to the mediator and to all attorneys of record in the action. The court may require the mediator to serve without compensation in some circumstances.

(4) Request for Mediation Without Charge. A party, or the parties jointly, may request pro bono (free of charge) mediation. To do so, parties may complete and sign the Request for Mediation Without Charge form, available from the Clerk's Office and on the court's website. On the form, parties must indicate the basis for the request, which may include that one or more parties are unable, without financial hardship, to pay the anticipated fee for the services of the mediator.

Best regards,
Venus

From: Christina Henry <chenry@hdm-legal.com>

Sent: Monday, July 25, 2022 11:48 AM

To: Shelley N. Ripley <SNR@witherspoonkelley.com>; vsprings@springslawfirm.com; Matthew W. Daley <MWD@witherspoonkelley.com>

Cc: 'Elizabeth Hebener Norwood' <elizabeth@gnlawseattle.com>

Subject: Re: Kriegman v Pontons 2:22-cv-307 Confidential Settlement Offer/FRE 408

Shelley,

I also endorse the three mediators below.. Frankly, It is a stretch for us to even consider a couple of them, but in good faith we vetted them and decided they would be fair after inquiring with others... in any case, without a settlement, this case will go on appeal. If we need to ask the judge to kick out the mediation date until her rules, that may be better than attempting to have a mediation that is proforma..

I am really astonished at the position you are taking to only accept unpaid mediators.. and perhaps that is because today it's unlikely to settle.. if that is the case, let's just ask the judge to continue the date until he rules.

Christina Henry

Get Outlook for iOS

From: Shelley N. Ripley <SNR@witherspoonkelley.com>

Sent: Monday, July 25, 2022 8:35 AM

To: vsprings@springslawfirm.com <vsprings@springslawfirm.com>; Matthew W. Daley <MWD@witherspoonkelley.com>

Cc: Christina Henry <chenry@hdm-legal.com>; 'Elizabeth Hebener Norwood' <elizabeth@gnlawseattle.com>

Subject: RE: Kriegman v Pontons 2:22-cv-307 Confidential Settlement Offer/FRE 408

Venus –

We reviewed your proposed mediators for this matter. The issue we have with all 3 is that they require payment. We chose potential mediators that do not assess a fee for their services. As such, we would ask that you reconsider Judge Marc Barreca or Judge Brian A. Tscuchida. If either is not acceptable, we could suggest additional judicial candidates.

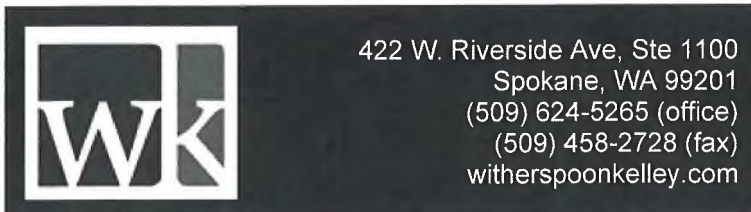
Please let us know.

Shelley

Shelley N. Ripley

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From: vsprings@springslawfirm.com <vsprings@springslawfirm.com>
Sent: Friday, July 15, 2022 7:32 AM
To: Shelley N. Ripley <SNR@witherspoonkelley.com>; Matthew W. Daley <MWD@witherspoonkelley.com>
Cc: 'Christina Henry' <chenry@hdm-legal.com>; 'Elizabeth Hebener Norwood' <elizabeth@gnlawseattle.com>
Subject: RE: Kriegman v Pontons 2:22-cv-307 Confidential Settlement Offer/FRE 408

Good morning,

I apologize for the long delay but my client would prefer if you could select some names from the list of Attorney Neutrals for the mediation. We propose Ann T Marshall, Stuart Dunwoody, or Paris Kimberley Kallas.

Many thanks,
Venus

From: Shelley N. Ripley <SNR@witherspoonkelley.com>
Sent: Tuesday, June 28, 2022 8:41 PM
To: vsprings@springslawfirm.com; Matthew W. Daley <MWD@witherspoonkelley.com>
Cc: 'Christina Henry' <chenry@hdm-legal.com>; 'Elizabeth Hebener Norwood' <elizabeth@gnlawseattle.com>
Subject: RE: Kriegman v Pontons 2:22-cv-307 Confidential Settlement Offer/FRE 408

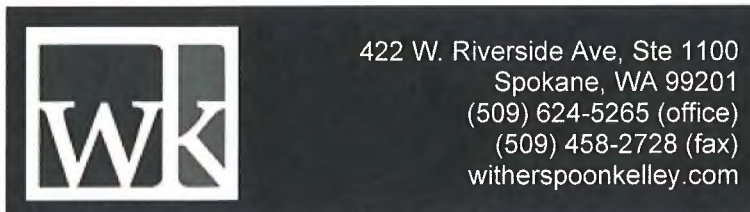
Ms. Springs –

I am following up on the parties' formal mediation. Are your clients willing to schedule the mediation with a magistrate judge or bankruptcy court from the Western District of Washington? We would recommend Judge Marc Barreca or Judge Brian A. Tsuchida. Please advise at your convenience.

Thank you.

Shelley

Shelley N. Ripley
Principal | Witherspoon • Kelley
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From: vsprings@springslawfirm.com <vsprings@springslawfirm.com>
Sent: Thursday, June 23, 2022 8:20 AM
To: Shelley N. Ripley <SNR@witherspoonkelley.com>; Matthew W. Daley <MWD@witherspoonkelley.com>